

HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEONARD C. LINDSAY and
CARL E.W. ZEHNER,

Plaintiffs,

v.

CARNIVAL CORPORATION,
CARNIVAL PLC , HOLLAND
AMERICA LINE, INC., HOLLAND
AMERICA LINE – U.S.A., INC.,

Defendants.

C20-982 TSZ

**STIPULATED MOTION AND
ORDER TO EXTEND DEADLINE
TO FILE MOTION FOR CLASS
CERTIFICATION**

The parties, by and through counsel, file this Stipulated Motion and Order to Extend
Deadline to File Motion for Class Certification pursuant to LCR 23(i)(3) as follows:

1. Plaintiffs filed their original Class Action and Individual Complaint for Damages
June 24, 2020, individually and on behalf of similarly situated persons, seeking damages for
injuries sustained in connection with the COVID pandemic while on board the MS Zaandam
passenger-cruise ship. (Dkt. 1).

2. On August 25, 2020, after Defendants appeared but before a responsive pleading
was filed, the Parties filed a stipulation allowing Plaintiffs to file a First Amended Complaint by

1 September 11, 2020. (Dkt. 21). The stipulation further provided that Defendants would have
 2 until October 2, 2020 to file a motion under Fed. R. Civ. P. 12, with a noting date of November
 3 6, 2020. This Stipulation was granted by United States Magistrate Judge Theresa L. Fricke on
 4 August 27, 2020. (Dkt. 24).

5 3. Plaintiffs filed their First Amended Individual Complaint and Complaint – Class
 6 Action for Damages on September 11, 2020. (Dkt. 26). Defendants filed a motion to dismiss
 7 under Fed. R. Civ. P. 12(b)(1), 12(b)(6) and 23(d)(1)(D) on November 2, 2020. (Dkt. 37).

8 4. On September 22, 2020, Judge Gary Klausner issued a ruling on a motion to
 9 dismiss in another COVID-19 cruise line case, *Archer et al. v. Carnival Corporation and PLC et*
 10 *al.*, 2:20-cv-04203-RGK-SK (C.D. Cal. Sept. 22, 2020) in which the court dismissed, without
 11 prejudice, several of the same claims at issue in this case. After conferring with Defendants’
 12 counsel and reviewing Defendants’ motion to dismiss, the Parties stipulated that the most
 13 efficient procedure would for Defendants to withdraw their pending Motion to Dismiss and
 14 modify the pleading the schedule to allow Plaintiffs to file a Second Amended Complaint to
 15 address some changes to the parties and address the issues raised in the *Archer* ruling.

16 5. On October 21, 2020, the Parties filed a Stipulation and [Proposed] Order to
 17 Amend Pleading Schedule requesting leave for Plaintiffs to file a Second Amended Complaint
 18 by October 30, 2020. (Dkt. 45). The parties further stipulated that Defendants should have until
 19 November 20, 2020 to file a responsive pleading or motion under Rule 12; that Plaintiffs’ should
 20 file any response to a motion to dismiss by December 11, 2020; and that Defendants’ shall file
 21 any reply by the noting date of December 25, 2020. This Stipulation was granted by a Minute
 22 Entry on October 30, 2020.

23 6. Plaintiffs filed their Second Amended Class Action and Individual Complaint for
 24 Damages on October 30, 2020. (Dkt. 46). Defendants filed their Motion to Dismiss on November
 25 20, 2020. (Dkt. 50). Pursuant to the Stipulation and Court’s order, the briefing on this Motion
 26

1 will be completed on December 25, 2020.

2 7. Pursuant to LCR 23(i)(3), “within one hundred eighty days after the filing of a
3 complaint in a class action, unless otherwise ordered by the court or provided by statute, the
4 plaintiff shall move for determination under Fed. R. Civ. P. 23(c)(1), as to whether the case is to
5 be maintained as a class action.”

6 8. To date, no scheduling order has been issued by the Court.

7 9. Based on the original complaint filing date, the deadline for Plaintiffs to move for
8 class certification under the Local Rules is December 21, 2020. If the date is calculated from the
9 First Amended Complaint, the deadline would be March 10, 2021; and if calculated from the
10 Second Amended Complaint, the deadline would be April 28, 2021.

11 10. The Parties stipulate that the deadline for filing a motion for class certification
12 should be extended and set for sixty (60) days after the Court issues its ruling on Defendants’
13 Motion to Dismiss.

14 11. This extension is sought for good cause. The Parties previously stipulated that
15 Plaintiffs could amend their complaint on two occasions to preemptively address issues that were
16 raised by Defendants and by the *Archer* ruling. No scheduling order has been issued and no
17 discovery has occurred. Currently, the noting date for Defendants’ Motion to Dismiss is not until
18 four days *after* the deadline for Plaintiffs to file a motion for class certification. As a result, the
19 Parties do not know which claims will proceed. Accordingly, if Plaintiffs filed a motion for class
20 certification on December 21, 2020, portions of it could be mooted by a subsequent ruling on
21 Defendants’ Motion to Dismiss. Given the posture of the case, an extension of the deadline to
22 file a motion for class certification is warranted to address the preliminary pleading issues and to
23 allow the parties to commence discovery.

24 12. The Parties therefore request that the Court extend the deadline for Plaintiffs to
25 file a motion for class certification to sixty (60) days after the Court issues its ruling on
26

1 Defendants' Motion to Dismiss or some other later date, subject to modification and further
2 extension in future scheduling orders.
3

4 Dated: December 15, 2020

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9 Dated: December 15, 2020

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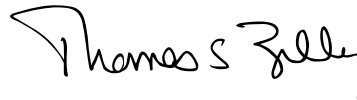
**Application to appear pro hac vice pending*

*Attorneys for Defendants,
Carnival Corporation and Carnival plc*

ORDER

PURSUANT TO THE STIPULATION, THE COURT ORDERS that the deadline for Plaintiffs to file a motion for class certification under LCR 32(i)(3) is extended to sixty (60) days after the Court issues its ruling on Defendants' Motion to Dismiss. (Dkt. 50.)

DATED: December 16, 2020



Thomas S. Zilly
United States District Court Judge